



PUBLIC NOTICE

Federal Communications Commission
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DA 05-49

INDEPENDENT PAYPHONE ASSOCIATION OF NEW YORK'S PETITION FOR PRE-EMPTION AND DECLARATORY RULING CONCERNING REFUND OF PAYPHONE LINE RATE CHARGES

PLEADING CYCLE ESTABLISHED

CC Docket No. 96-128

Released: January 7, 2005

Comment Date: January 18, 2005

Reply Comment Date: January 25, 2005

On December 29, 2004, the Independent Payphone Association of New York (IPANY) filed a petition asking the Commission to pre-empt rulings of the State of New York that allegedly contravene the Commission's payphone orders. IPANY's petition also seeks a declaratory ruling that IPANY members are entitled to refunds of the tariffed payphone line rate charges they paid to Verizon from 1997 to date, to the extent those charges exceeded rates that comply with the Commission's new services test.¹

Also on December 29, 2004, IPANY filed a motion pursuant to section 1.227 of the Commission's rules² to consolidate its petition with the Commission's consideration of the Illinois Public Telecommunications Association's July 30, 2004, petition for a declaratory ruling (IPTA) and the Southern Public Communications Association (SPCA) petition for similar relief

¹ See *Implementation of the Pay Telephone Reclassification and Compensation Provisions Of the Telecommunications Act of 1996*, CC Docket No.96-128, Petition of Independent Payphone Association of New York, Inc. for an Order on Pre-emption and Declaratory Ruling at 10 (filed December 29, 2004).

² 47 C.F.R. § 1.227.

in this docket.³ IPANY contends that its petition raises substantially the same issues presented by IPTA's and SCPA's petitions for declaratory ruling. IPTA's and SCPA's petitions contend that its members are entitled to refunds of the tariffed payphone line rate charges they paid to SBC Illinois and to Verizon North and South and BellSouth, respectively, from 1997 to 2003, to the extent the charges exceeded rates that comply with the Commission's new services test.

IPANY's petition appears to raise the same or substantially similar issues raised in the IPTA and SCPA petitions. Accordingly, we will consider IPANY's petition with our consolidated consideration of the IPTA and SCPA petitions in CC Docket No. 96-128.

We invite comment on the IPANY petition. Pursuant to applicable procedures set forth in sections 1.415 and 1.419 of the Commission's rules, interested parties may file comments on or before xxxx and reply comments on or before xxxxx. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24121 (1998).

Comments filed through the ECFS can be sent as an electronic file via the Internet to <<http://www.fcc.gov/e-file/ecfs.html>>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number, in this case, **CC Docket No. 96-128**. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail).

The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002.

- The filing hours at this location are 8:00 a.m. to 7:00 p.m.
- All hand deliveries must be held together with rubber bands or fasteners.
- Any envelopes must be disposed of before entering the building.

³ *Comment Sought on Southern Public Telecommunications Association's Petition For a Declaratory Ruling Concerning Refund of Payphone Line Rate Charges*, Public Notice, CC Docket No. 96-128, DA 04-3653 (rel. November 19, 2004).

-Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

-U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554.

All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, Room TW-A325, 445 12th Street, SW, Washington, D.C. 20554. Parties should also send a copy of their filings to Jon Stover, Pricing Policy Division, Wireline Competition Bureau, Federal Communications Commission, Room 5-A365, 445 12th Street, SW, Washington, D.C. 20554, or by e-mail to jon.stover@fcc.gov. Parties shall also serve one copy with the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW, Room CY-B402, Washington, D.C. 20554, (202) 488-5300, or via e-mail to fcc@bcpiweb.com.

The petition for declaratory ruling and comments filed by participating parties will be available for public inspection and copying during business hours at the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY-A257, Washington, DC 20554. The documents may also be purchased from BCPI, telephone (202) 488-5300, facsimile (202) 488-5563, TTY (202) 488-5562, or by e-mail at fcc@bcpiweb.com.

This matter shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.⁴ Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one- or two-sentence description of the views and arguments presented generally is required.⁵ Other requirements pertaining to oral and written presentations are set forth in section 1.1206(b) of the Commission's rules.⁶

Action by the Chief, Pricing Policy Division, Wireline Competition Bureau.

For further information, contact Jon Stover of the Pricing Policy Division, Wireline Competition Bureau at (202) 418-0390.

⁴ 47 C.F.R. § 1.1200 *et seq.*

⁵ See 47 C.F.R. § 1.1206(b)(2).

⁶ 47 C.F.R. § 1.1206(b).